

STATE OF GEORGIA  
COUNTY OF CLAYTON

RESOLUTION NO. 2007 - 154

A RESOLUTION AUTHORIZING CLAYTON COUNTY TO ENTER INTO A LEASE AGREEMENT WITH GLENWOOD MORROW COMPANY, L.L.C. PROVIDING FOR THE LEASE OF PROPERTY FOR USE AS A MOTOR VEHICLE REGISTRATION AND TAG OFFICE FOR THE COUNTY TAX COMMISSIONER'S OFFICE; TO AUTHORIZE THE CHAIRMAN TO EXECUTE THE LEASE AGREEMENT, AND OTHERWISE PERFORM ALL ACTS NECESSARY TO ACCOMPLISH THE INTENT OF THIS RESOLUTION; TO AUTHORIZE THE FINANCE DIRECTOR TO AMEND THE BUDGET WHERE NECESSARY TO REFLECT THE APPROPRIATIONS AND EXPENSES RELATING THERETO; TO PROVIDE AN EFFECTIVE DATE OF THIS RESOLUTION; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to the provisions of O.C.G.A. § 40-2-23, Clayton County's Tax Commissioner "shall be designated as tag agent[ ]. . . for the purpose of accepting applications for the registration of vehicles. The commissioner is authorized to promulgate rules and regulations for the purpose of delegating. . . the custodial responsibility for properly receiving, processing, issuing, and storing motor vehicle titles or registrations, or both"; and

WHEREAS, the County wishes to lease certain property from Glenwood Morrow Company, L.L.C. for use by the County Tax Commissioner as a motor vehicle registration and tag office, such property being well suited for the intended purposes; and

WHEREAS, the Board of Commissioners deems it in the best interest of Clayton County, and that the County will best be served by entering into a lease agreement for the stated purpose.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF  
CLAYTON COUNTY, GEORGIA, AND IT IS HEREBY RESOLVED**

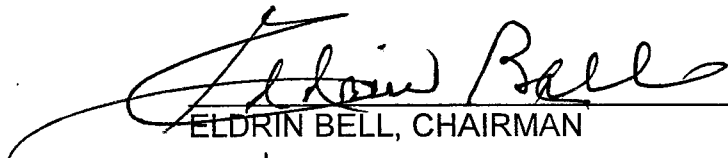
Section 1. The Board of Commissioners hereby authorizes Clayton County to enter into a lease agreement with Glenwood Morrow Company, L.L.C. providing for the terms and conditions under which property will be leased for use as a motor vehicle registration and tag office. The Board of Commissioners hereby authorizes the Chairman to execute the lease agreement, and otherwise perform all acts necessary to accomplish the intent


of this Resolution. Further, the Board of Commissioners authorizes the Finance Director to amend the budget where necessary to reflect the appropriations and expenses relating thereto. The lease agreement shall be in substantially the form attached hereto, subject to such minor changes, insertions or deletions as the Chairman of the Board of Commissioners may approve.

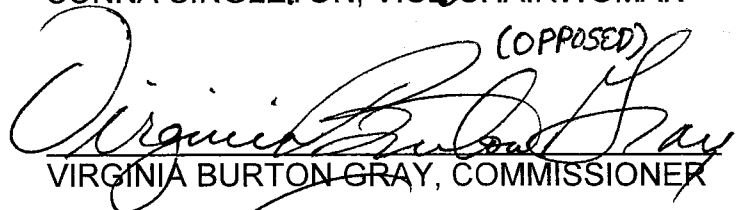
Section 2. This Resolution shall be effective on the date of its approval by the Board of Commissioners.

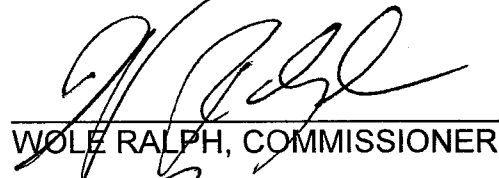
**SO RESOLVED**, this the 18<sup>th</sup> of September, 2007.

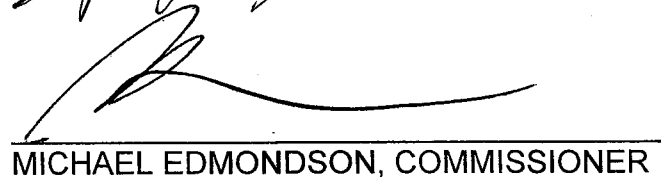
CLAYTON COUNTY BOARD OF COMMISSIONERS

  
ELDRIN BELL, CHAIRMAN


  
SONNA SINGLETON, VICE CHAIRWOMAN

  
VIRGINIA BURTON GRAY, COMMISSIONER  
(OPPOSED)

  
WOLE RALPH, COMMISSIONER

  
MICHAEL EDMONDSON, COMMISSIONER

ATTEST:

  
SHELBY D. HAYWOOD, CLERK

AGREEMENT OF LEASE, made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between **GLENWOOD MORROW COMPANY, L.L.C.** with a mailing address at 16740 Birkdale Commons Parkway, Suite 306, Huntersville, NC 28078 (hereinafter called the "Landlord") and **CLAYTON COUNTY**, with a mailing address at Administration Annex 3, 2<sup>nd</sup> Floor, 121 South McDonough Street., Jonesboro, Georgia 30236 (hereinafter called the "Tenant").

WITNESSETH:

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord those certain Premises (as hereinafter defined) located in the **Southlake Festival Shopping Center** on Southlake Parkway, City of Morrow, Clayton County, Georgia (hereinafter called the "Shopping Center"), as described in Exhibit "A" and more particularly hereinafter described, upon the terms and conditions as herein set forth.

1. **Definitions:** In addition to other terms which are defined elsewhere in this Lease, the following terms when used in this Lease shall have the meanings set forth in this section, and only such meanings, unless such meanings are expressly limited or expanded elsewhere herein:

(a) The Premises: The premises leased shall consist of the space (hereinafter called the "Premises" or the "Leased Premises"), shown cross-hatched on Exhibit "B" attached hereto and made a part hereof, consisting of approximately  $\pm$  3,153 square feet, located in the Shopping Center. The Premises square footage is based on the centerline measurement of common demising walls and the outside measurement of exterior demising walls.

(b) Lease Term: The term of this Lease shall commence on the Effective Date (as hereinafter defined) and shall terminate without further obligation on the part of either party on the close of the calendar year in which it was executed (the "Initial Termination Date"). After the Initial Termination Date, this Lease shall automatically renew for six (6) annual periods commencing on the first day of each respective calendar year (January 1, 2008; January 1, 2009; January 1, 2010; January 1, 2011; January 1, 2012; and January 1, 2013) and shall terminate at the close of the sixth calendar year as described above, provided that Tenant may terminate this Lease at the end of any annual period without further obligation on the part of Tenant by providing Landlord not less than one hundred fifty (150) days prior written notice.

(c) INTENTIONALLY OMITTED.

(d) Fixed Minimum Rent:

	Annually	Monthly
Months 1 through 24 of Lease:	\$34,683.00	\$2,890.25
Months 25 through 36 of Lease:	\$40,620.00	\$3,385.00
Months 37 through 60 of Lease:	\$46,872.00	\$3,906.00
Months 61 through 7 <sup>th</sup> Lease Year:	\$51,552.00	\$4,296.00

(e) INTENTIONALLY OMITTED

(f) Rent Commencement: Fixed Minimum Rent shall commence on the date which is the earlier of:  
(i) **Forty-Five (45)** days following Landlord's delivery of the Premises; or (ii) Tenant's opening for business. Notwithstanding anything contained herein to the contrary, provided Tenant is not in default of the Lease, Tenant's Fixed Minimum Rent for the first three (3) months following Rent Commencement shall be abated (total abated rent equals \$8,670.75). Such abatement of Tenant's Fixed Minimum Rent is conditioned on Tenant's fulfillment of all the terms and conditions of this Lease and, in addition to such other remedies as Landlord may have under this Lease and at law or in equity, all such amounts abated herein shall become immediately due and payable upon any breach by Tenant of the Lease herein.

(g) INTENTIONALLY OMITTED

(h) INTENTIONALLY OMITTED

(i) Delivery of Premises: The Premises shall be deemed delivered upon execution and delivery of this Lease by both parties. Tenant accepts the Premises "as-is" and "where-is," provided that at delivery the HVAC system, electrical system and plumbing system serving the Premises shall be in good

working condition.

(j) INTENTIONALLY OMITTED

(k) Use of Premises: solely for the purpose of operating a motor vehicle registration and tag office and such other administrative services as may be permitted by the office of the Clayton County Tax Commissioner and for no other purpose. Tenant shall, during the entire Lease Term, continuously use the Leased Premises for the purpose hereinbefore stated.

(l) Tenant's Trade Name: Any trade name or "d/b/a" to be used by Tenant at the Premises shall be subject to Landlord's prior reasonable written approval, which such approval shall not be unreasonably withheld conditioned or delayed.

**2. Shopping Center:** The Shopping Center includes the parcel(s) of land generally described in Exhibit "A" and improvements (including all Common Areas) thereon. Landlord reserves the right to add to, transfer or sever the ownership of or title to any portion of the Shopping Center. Landlord in its sole and absolute discretion, reserves the right to expand or remodel the Shopping Center and to change the configuration, size and dimensions of the Shopping Center, the number, location and dimensions of buildings, parking areas, driveways, entrances, exits and landscaped areas, the number of floors in any of the buildings, the dimensions, identity, and type of stores or tenancies and the Common Area.

**3. Payment of Fixed Minimum Rent:** Tenant agrees to pay to Landlord, at the office of Landlord, or at such other place designated by Landlord, without any prior demand therefor and without any deduction or set-off whatsoever, Fixed Minimum Rent as set forth in the schedule contained in Section 1 (d) herein. Tenant's obligation to pay Fixed Minimum Rent shall commence on the date set forth in Section 1 (f) herein. Rent shall be payable in equal monthly installments on the first day of each month. If the term shall commence upon a day other than the first day of a calendar month, then Tenant shall pay, upon Lease Commencement, a pro-rata portion of the fixed monthly rent prorated on a per diem basis.

This Lease shall obligate Tenant only for Fixed Minimum Rent payable during the calendar year of execution or, in the event of a renewal by Tenant, for those sums of Fixed Minimum Rent payable in the individual calendar year renewal term. Nothing in this Lease shall create a debt of the Tenant for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond the calendar year of such renewal.

**4. Lease Year Defined:** For purposes of this Lease, the first Lease Year shall be deemed to begin on the Rent Commencement Date and to end on the close of the calendar year in which the Lease was executed; provided, each succeeding twelve (12) month period thereafter shall be deemed a Lease Year. Any computations requiring proration shall be made on a per diem basis using a 365-day year.

5. INTENTIONALLY OMITTED.

**6. Additional Rent:** Any amounts required to be paid by Tenant under this Lease in addition to the minimum rent shall be deemed additional rent, whether or not designated as such, and shall be payable at Landlord's office, at the times provided in this Lease. If such amounts or charges are not paid at the time provided in this Lease such amounts shall be collectible as additional rent with the next installment of rent thereafter falling due hereunder, to be paid without set-off or deduction, but nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of the Landlord.

**7. Late Rent:** If Tenant shall fail to pay, as and when the same is due and payable, any fixed minimum rent, additional rent or other sums to Landlord hereunder, such unpaid amounts shall bear interest from the due date thereof to the date of payment at the rate which is the lesser of twenty percent (20%) per annum or the maximum interest rate permitted by law. In addition to said interest Tenant shall pay Landlord a late charge, which shall constitute liquidated damages, equal to \$15.00 per day for each day rent is late after the fifth day of the month, which shall be paid to Landlord together with such fixed Minimum Rent, additional rent or other sums due Landlord. The provisions of this Lease with respect to any obligation of Tenant to pay any sums to Landlord or to perform any act after the expiration or other termination of this Lease shall survive the expiration or other termination of this Lease.

**8. Tenant's Proportionate Share of Operating Costs:** Tenant's share (the "Proportionate Share") of Operating Costs shall be the product of multiplying the amount of such costs for the Shopping Center by a fraction, the numerator of which is the number of square feet of the Premises as set forth in Section 1 (a) above,

and the denominator of which is the total number of square feet of space in the Shopping Center (excluding outparcels) on the date as of which such computation is made under the terms of this Lease.

9. INTENTIONALLY OMITTED.

**10. Operating Costs:** Tenant shall pay to Landlord its Proportionate Share of the Operating Costs of the Shopping Center. Operating Costs shall mean the total costs and expenses (determined in accordance with Landlord's method of accounting and allocated to any particular calendar year) incurred in operating (including personnel), managing and maintaining the Shopping Center and Commons Areas together with an administrative charge equal to fifteen (15%) percent of such costs and expenses, which Operating Costs shall include, but are not limited to the following costs: (i) all premiums of insurance for the Shopping Center, including, but not limited to fire, casualty, public liability and extended coverage and rent insurance; (ii) parking lot repaving and restriping; (iii) decorations; (iv) cleaning, painting, repairs, including all replacement of equipment and signs, replacement and maintenance of the roof, the sprinkler system, curbs, walkways, drainage and lighting facilities, utilities, systems and structures of the Shopping Center; (v) lighting (including signs and seasonal); (vi) landscaping the Common Areas and the Shopping Center; (vii) complying with governmental requirements; and (viii) promoting the Shopping Center in a manner deemed by Landlord to be reasonable and appropriate for the best interests of the Shopping Center.

**11. Payment of Operating Costs:** Tenant's Proportionate Share of all Operating Costs during the Lease Term shall be paid, beginning on Rent Commencement, in monthly installments on or before the first day of each calendar month, in advance, equal to 1/12 of amount of such expenses for the then calendar year as estimated by Landlord. Upon receipt of all bills for such items attributable to each calendar year, Landlord shall furnish Tenant with the written statement of the actual amount of Tenant's Proportionate Share of the cost of such items for such year. If the total amount paid by Tenant under this Section for any calendar year shall be less than the actual amount due from Tenant for such year, as shown on such statement, Tenant shall pay to Landlord the difference between the amount paid by Tenant and the actual amount due such deficiency to be paid within fifteen (15) days after demand therefore by Landlord; and if the total amount paid by Tenant hereunder for any such year shall exceed such actual amount due from Tenant for such calendar year, Tenant shall be entitled to offset the excess against payments next thereafter becoming due under this Section or, at Landlord's option such excess shall promptly be refunded by Landlord to Tenant. Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder. Landlord's and Tenant's obligations under this Section shall survive the expiration of this Lease. Landlord shall use its best efforts to minimize such costs of operation, management and maintenance in a manner consistent with generally accepted shopping center practices.

12. INTENTIONALLY OMITTED.

**13. Operation of Business:** Except as may be otherwise provided, Tenant will keep the Leased Premises open for business in accordance with its annual calendar and hours of operation as regulated by the State of Georgia. Tenant shall keep the display windows and signs, if any, in, or on the exterior of the Leased Premises well lighted during the hours from sundown to midnight.

**14. Rules and Regulations:** Tenant covenants and agrees with Landlord to obey in all respects the Rules and Regulations which Landlord may from time to time reasonably establish to govern the operation of the Shopping Center. The Rules and Regulations are set forth in Exhibit "C" to this Lease. Landlord shall notify Tenant in writing of any changes in or additions to the Rules and Regulations.

**15. Operation of Business by Other Parties:** Tenant shall not permit any business to be operated in or from the Leased Premises by any concessionaire, licensee or any party other than Tenant, without the prior written consent of Landlord.

**16. Use of Adjacent Space:** Landlord shall not lease the space immediately adjacent to the Premises (on the Jonesboro Road side of the Premises) for the operation any of the following uses: (i) any bookstore and/or facility selling or displaying books, magazines, literature, or videos containing adult material where "adult material" means any printed and/or pictorial work that appeals to a prurient interest in sex, is patently offensive according to contemporary community standards, and has no serious literary, artistic, political, or scientific value, and any printed and/or pictorial work rated X, XX, XXX (or of a rating assigned to works containing material more sexually explicit than XXX), provided that no material shall be considered Adult Material if it is available, or of the type to be available to the community, through a broadcast network (i.e., NBC, ABC or CBS) or it is, or has been in a cinema or theater for public viewing in the community where the Premises is located and does not have a rating of X, XX, XXX, or rated for more sexually explicit content than XXX; (ii) a business

which derives fifty percent (50%) or more of its total revenue from the sale of tobacco products; and (iii) a business which derives fifty percent (50%) or more of its total revenue from the sale of beer, wine or liquor (separately or in combination).

**17. Common Areas; Control by Landlord:** All automobile parking areas, driveways, entrances and exits thereto, and other facilities furnished by Landlord in or near the Shopping Center, including employee parking areas, the truck way or ways, loading docks, package pick-up stations, pedestrian sidewalks and ramps, lighting, landscaped areas, roofs, exterior wall, mechanical areas, exterior stairways, sanitary and water lines and facilities, detention basins and other areas and improvements provided by Landlord for the general use, in common, of tenants, their officers, agents, employees and customers, whether located on or off the Shopping Center property, (the "Common Areas") shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all facilities and areas mentioned in this Article. Landlord shall have the right to construct, maintain and operate lighting facilities on all said Common Areas and Shopping Center improvements; to police the same; from time to time to change the area, level, location and arrangement of parking areas and other Common Areas hereinabove referred to; to make installations therein and to alter, move and remove the same; to restrict parking by tenants, their officers, agents and employees to employee parking areas; to close all or any portion of said Common Areas to such extent as may, in the opinion of Landlord's counsel, be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein; to close temporarily all or any portion of the parking areas or other Common Areas; to discourage non-customer parking; and to do and perform such other acts in and to said areas and improvements as, in the use of good business judgment, the Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by tenants, their officers, agents, employees and customers. Landlord will operate, manage and maintain the Common Areas referred to above in such manner as Landlord, in its sole discretion, shall determine from time to time. Without limiting the scope of such discretion, Landlord shall have the full right and authority to employ all personnel and to make all rules and regulations pertaining to and necessary for the proper operation and maintenance of the Common Areas and Landlord shall not be subject to any liability therefor, nor shall Tenant be entitled to any compensation or any diminution or abatement of rent on account of any such determination or charge, nor such action be construed as an actual or constructive eviction of Tenant.

**18. Use of Common Areas:**

(a) All Common Areas and facilities not within the Leased Premises, which Tenant may be permitted to use and occupy, are to be used and occupied under a revocable license, and if the amount of such areas be diminished, Landlord shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent, nor shall such diminution of such areas be deemed constructive or actual eviction.

(b) Tenant and its permitted concessionaires, officers, employees, agents, customers and invitees shall have the nonexclusive right, in common with Landlord and all others to whom Landlord has or may hereafter grant rights, to use the Common Areas and facilities as designated from time to time by Landlord, subject to such reasonable regulations as Landlord may from time to time impose, including the designation of specific areas in which cars owned or used by Tenant, its permitted concessionaires, officers, employees, and agents must be parked. Tenant agrees to abide by such regulations and to use its best efforts to cause its permitted concessionaires, officers, employees, agents, customers and invitees to conform thereto. Landlord may at any time close temporarily any Common Areas and facilities to make repairs or changes, to prevent the acquisition of public rights therein, or to discourage noncustomer parking, and may do such other acts in and to the Common Areas and facilities as in its judgment may be desirable to improve the convenience thereof. Tenant shall not at any time interfere with the rights of Landlord and other tenants, its and their permitted officers, employees, agents, customers and invitees, to use any part of the parking areas and other common areas and facilities.

(c) Tenant shall not solicit business or distribute any advertising materials in the Common Areas.

**19. Tenant Leasehold Improvements:** Tenant shall submit its plans and specifications for Landlord review and written approval for all leasehold improvements (including, but not limited to a floor plan, mechanical, electrical and plumbing drawings) within sixty (60) days following execution of this Lease. Landlord shall have ten (10) days following Landlord's receipt of such plans and specifications to provide Tenant with Landlord's written comments, if any. If Landlord fails to respond within said ten (10) day period, Tenant's plans and specifications shall be deemed approved. All leasehold improvements (including without limitation fixtures, shelving, floor coverings, exteriors signs, lighting, awnings and plumbing fixtures) installed by Tenant shall be new or

completely reconditioned. Tenant shall not install or alter any such improvements or make any changes to the store front without first obtaining Landlord's written approval and consent. Tenant shall present to the Landlord plans and specifications for such work at the time approval is sought. Tenant shall improve and fixture the Premises in a manner, including design and quality of materials, consistent with that found in first class community shopping centers. Tenant shall be responsible for obtaining all governmental permits required for the leasehold improvements it installs.

**20. Removal of Tenant Leasehold Improvements and Restoration of Premises:** All alterations, changes and additions and all improvements, including leasehold improvements, made by Tenant or made by Landlord on Tenant's behalf, whether or not paid for wholly or in part by Landlord shall remain Tenant's property for the term. Any alterations, changes, additions and improvements shall immediately upon the termination of this Lease become Landlord's property, be considered part of the Premises, and not be removed at or prior to the end of the term without Landlord's written consent unless Landlord requests Tenant to remove same. If Tenant fails to remove any shelving, decorations, equipment, trade fixtures and personal property from the premises prior to the end of the term, they shall at Landlord's option (a) become Landlord's property and Tenant shall have no further interest therein; or (b) Landlord shall cause such property to be removed from the premises and Tenant shall pay Landlord the cost of such removal.

**21. Mechanics Liens:** Tenant shall not allow any mechanics lien to be filed against the Premises or the Shopping Center. If any mechanics or other lien or order for the payment of money or any notice of intention to file a lien shall be filed against the Premises or the Shopping Center arising out of any labor or material furnished or alleged to have been furnished for the Premises or any occupant thereof, or any contract relating thereto, Tenant shall cause the same to be canceled or discharged of record by bond or otherwise as allowed by law at the expense of Tenant within five (5) days after the filing thereof; and Tenant shall also, at its expense, defend Landlord in any such action and indemnify Landlord against any damages or costs arising therefrom.

**22. Signs:** Tenant shall, at its expense, erect and maintain one exterior sign in the area above the Premises designated by Landlord. Such signs shall be of a size, character and design to be approved in writing by Landlord, in accordance with the Sign Specifications (which Landlord may change in Landlord's sole discretion) attached at Exhibit "E." Landlord shall have the right to establish standards governing the size, character and design of all tenant signs and Tenant's signs shall comply with such standards. No other sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed on any part of the outside of the Premises or the building of which they form a part without the consent of the Landlord. Tenant shall at all times, maintain its signage in first class condition and shall promptly repair or replace such signage as is required to keep such signage in a first class condition (e.g., faces on letters, fully illuminated, etc.). If Tenant fails to repair or replace its signage within fourteen (14) days written notice by Landlord to do so, Landlord may repair or replace Tenant's signage and Tenant shall reimburse Landlord for all reasonable costs incurred by Landlord within fifteen (15) days of receipt of invoice for same. Failure to so reimburse Landlord shall be an event of default. Tenant shall keep its exterior sign illuminated one half (1/2) hour before nightfall until at least 11:00 p.m., seven days a week, so long as the store on the Property is in business.

**23. Maintenance of Premises by Tenant and Landlord:** Tenant shall at all times keep the Leased Premises (including without limitation lighting, heating, plumbing, and air conditioning systems, plate glass, and all other nonstructural portions thereof) clean and in good order, condition and repair (including without limitation replacing damaged plate glass and reasonably periodic painting as determined by Landlord). Tenant shall, at its expense, maintain a Landlord approved maintenance/service contract for the heating and air conditioning systems (hereafter "HVAC") during the entire term of this Lease. Such maintenance/service contract must become effective and a copy thereof delivered to Landlord within thirty (30) days of the date Tenant takes possession of the Premises. Tenant, upon Landlord's request, shall provide Landlord with copies of all receipts, invoices and documentation received in connection with the maintenance and repair of HVAC systems. Landlord shall, within ten (10) days following the Effective Date, engage Landlord's HVAC contractor to inspect the HVAC system and provide Tenant with a determination as to the HVAC system's condition. If Landlord's HVAC contractor determines that the HVAC system is not in good working condition, then Landlord shall engage Landlord's HVAC contractor, at Landlord's sole cost and expense, to make such repairs as are necessary to restore the HVAC system to good working condition. All such repairs, if any, shall be completed before the date Tenant opens for business in the Premises. Provided that Tenant is not in default under the Lease and complies with the HVAC maintenance/service contract requirements set forth herein, Landlord shall be responsible, at Landlord's sole cost and expense, for any required replacement (as determined by Landlord's HVAC contractor) of the HVAC unit(s) serving the Premises. In such event, Landlord shall employ Landlord's contractor for such replacement. In the event that the Premises is delivered with a new HVAC system or Landlord (at any time during the Lease term) replaces existing HVAC with a new unit(s), all service, repair and replacement costs with respect to the new unit(s) shall thereafter be the responsibility of Tenant and shall not be

subject to the limitation on replacement costs contained herein. In no event shall Landlord be responsible for any HVAC repair or replacement attributable to Tenant's negligent act or omission. Tenant shall also keep the sidewalk in front of the Premises and the area in the rear thereof free from obstructions, rubbish, dirt, snow and ice. Maintenance of the roof and structural repairs to the exterior walls of the building containing the Leased Premises shall be the responsibility of Landlord, but if Landlord is required to make repairs to the roof or structural portions by reason of Tenant's negligence, Landlord may add the cost of such repairs to the rent which shall thereafter become due. Nothing herein contained shall be deemed to suspend, delay or limit any other remedy of Landlord.

**24. Surrender of Premises:** At the expiration of the tenancy hereby created, Tenant shall surrender the Leased Premises broom-clean and in the same condition as the Leased Premises were in upon delivery of possession thereto under this Lease, reasonable wear and tear excepted, and shall surrender all keys for the Leased Premises to Landlord and shall inform Landlord of all combinations on locks, safes and vaults, if any, in the Leased Premises. Tenant shall remove all its trade fixtures, and any alterations or improvements (subject to the conditions set forth in Section 20 above) before surrendering the Premises as aforesaid and shall repair any damage to the Leased Premises caused thereby. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of the term of this Lease.

**25. Insurance:** Tenant shall, during the entire term hereof, at its sole cost and expense, keep in full force and effect a policy of public liability, bodily injury and property damage insurance with respect to the Leased Premises (including plate glass) and the business operated by Tenant and any subtenants or concessions of Tenant in the Leased Premises against claims for bodily injury, death or property damage occurring on, in or about the Premises, or resulting from or arising out of products sold from the Premises, of not less than Two Million Dollars (\$2,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate in respect of bodily injury, death or property damage and with a contractual liability endorsement to provide coverage for Tenant's indemnification set forth in Section 27 of this Lease. Tenant shall also keep in full force and effect throughout the term a Special Form property insurance policy or policies (or if such coverage is not in effect when needed, such other similar commercially reasonably available coverage as is then in effect) covering all leasehold improvements, trade fixtures, furnishings, equipment, inventory and other contents of the Leased Premises in amounts sufficient to avoid co-insurance. In the event that at any time during the Lease term or any extension or renewal thereof, beer, wines or other alcoholic liquors or beverages are sold, served or given away upon or from the Premises, Tenant shall, at its sole expense, obtain, maintain, and keep in force, Dram Shop insurance (with policy limits as Landlord may reasonably require) protecting both Tenant and Landlord in connection therewith. In the event Tenant shall fail to procure such Dram Shop insurance, then sales of the foregoing products shall be suspended until such coverage is again in force. All policies carried by Tenant shall name Landlord, any person, firms or corporations designated by Landlord, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Landlord thirty (30) days prior written notice. The insurance shall be in insurance companies approved by Landlord and a certificate of insurance/evidence of coverage (and if requested by Landlord, a copy of the policies) shall be delivered to Landlord within five (5) days following the Effective Date of the Lease and thereafter within five (5) days following Landlord's written request therefor. In the event Tenant fails, at any time during the Lease term, to provide Landlord with evidence of Tenant's insurance coverage or otherwise breaches this Section 25 herein, then Landlord, in addition to the other rights or remedies it may have under the Lease, at law or in equity, shall have the immediate right of re-entry and may deny Tenant access to the Premises until Tenant cures any breach of this Section 25 herein, all without service of notice or resort to legal process and without being deemed guilty of trespass, conversion, or becoming liable for any loss damages which may be occasioned thereby.

**26. Increase in Insurance Costs Due to Activity of Tenant:** Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Leased Premises any article which may be prohibited by the standard form of fire, casualty, rent or other insurance policies carried on the Shopping Center. Tenant agrees to pay any increase in premiums for any such insurance that may be charged resulting from the type of merchandise sold by Tenant in the Leased Premises, whether or not Landlord has consented to the same. Tenant shall pay such additional premium(s) within 30 days after receiving a bill therefor.

**27. Indemnification:** To the extent permitted by law, Tenant will indemnify Landlord, Landlord's managing agent, if any, and such other persons who are in privity of estate with Landlord, against any and all claims, actions, damages, liability and expense in connection with loss of life, bodily injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises, or the occupancy or use by Tenant of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Tenant, its agents, contractors, employees, servants, lessees or concessionaires. In case any of such parties shall without fault on its part, be made a party to any litigation commenced by or against Tenant, then, to the extent permitted



by law, Tenant shall protect and hold such parties harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by such parties in connection with such litigation.

**28. Waiver of Subrogation and Mutual Release:** To the extent permitted by law, Landlord and Tenant, for themselves and for their respective insurers, do hereby mutually release each other from any and all claims, demands, actions and causes of action that each may have or claim to have against the other (including, but not in limitation of the foregoing, all rights of subrogation accruing to any insurers of the parties) for loss of or damage to the property of the other, whether real or personal, caused by or resulting from any casualty of the type covered by fire or extended coverage insurance notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees, or agents. To the extent permitted by law, Landlord and Tenant will each endeavor to secure the inclusion in or an endorsement on any fire and extended coverage insurance policy insuring their respective property (whether real or personal) provisions by which a waiver of such subrogation is effected or authorized to be effected by the insured; provided, however, that a failure by either party to secure such inclusion or endorsement as aforesaid shall not in any manner affect the provisions of the above mutual release.

**29. Utilities:** Tenant shall be solely responsible for and promptly pay all charges for heat, water, gas, electricity or any other utility used or consumed in the Leased Premises. In no event shall Landlord be liable for an interruption or failure in the supply of any such utilities to the Leased Premises.

**30. Estoppel Certificate:** Within ten (10) days after request therefore by Landlord, or upon any sale, assignment or financing of the Leased Premises and/or the Shopping Center by Landlord, Tenant agrees to deliver in recordable form a certificate to any proposed mortgagee or purchaser, or to Landlord, certifying (if such be the case) that this Lease is in full force and effect and that there are no defenses or offsets thereto, or stating those claimed by Tenant.

**31. Attornment:** In the event Landlord transfers its interest in the Premises, voluntarily or involuntarily, Tenant shall make full and complete attornment to the Landlord's successor in interest as lessor for the balance of the term of this Lease upon the same terms as are contained herein. Tenant shall then make all rent payments thereafter directly to such lessor. In the event of any such transfer, Tenant shall execute an instrument in writing reasonably satisfactory to the new owner evidencing such attornment.

**32. Subordination:** This Lease is subject and subordinate to the lien of any mortgage or mortgages, or the lien resulting from any other method of financing or refinancing, now or hereafter in force against the Shopping Center of which the Leased Premises are a part or against any buildings hereafter placed upon the land of which the Leased Premises are a part, and to all advances made or hereafter to be made upon the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof. This clause shall be self-operative. Notwithstanding the foregoing, Tenant shall execute a commercially reasonable Subordination, Nondisturbance and Attornment Agreement within ten (10) days of request and furnishing of such instruments therefore.

**33. Attorney in Fact:** The Tenant, upon request of any party in interest, shall execute promptly the instruments required to carry out the intent of Sections 30, 31, and 32. The Tenant hereby irrevocably appoints the Landlord as attorney-in-fact for the Tenant with full power and authority to execute and deliver in the name of the Tenant any such instruments. If fifteen (15) days after the date of a written request by Landlord to execute such instruments, the Tenant shall not have executed the same, then, in such event Landlord may also cancel this Lease without any liability therefor.

**34. LANDLORD'S LIABILITY:** LANDLORD SHALL BE RESPONSIBLE TO TENANT ONLY SO LONG AS LANDLORD IS THE OWNER OF THE SHOPPING CENTER. IN NO EVENT SHALL THE LANDLORD, AND ITS MANAGERS, MEMBERS, PARTNERS, OR INVESTORS BE PERSONALLY OR INDIVIDUALLY LIABLE FOR ANY SUCH DAMAGES.

**35. Consent Required for Assignment:** Tenant will not assign this Lease in whole or in part, nor sublet all or any part of the Leased Premises, without the prior written consent of Landlord. The transfer by whatever means, including operation of law, of a controlling interest in the ownership of Tenant shall be considered an assignment subject to the terms of this Section. In the event Tenant desires to make a transfer hereunder, Tenant shall, in each instance, give Landlord written notice at least ninety (90) days prior to the effective date of any such proposed transfer, specifying in such notice whether Tenant proposes to assign, or sublet, or enter into one or more licenses or concession agreements. Such notice shall also include the following: (i) reasonably detailed information as to the character, reputation and business experience of the proposed transferee; (ii) financial information and bank references for the proposed transferee (including, at Tenant's expense, a current Dunn & Bradstreet report and a financial statement certified as being true and correct by the chief financial

executive of the proposed transferee); (iii) a copy of the proposed assignment and assumption agreement, sublease, license or concession agreement or other agreement; (iv) payment to Landlord of a non-refundable processing fee in an amount equal to one month of the then current fixed minimum rent for investigation, document review and/or preparation in connection with the proposed transaction whether or not the proposed transfer is consented to or consummated. Landlord shall (in its sole discretion) either reject or consent to any such proposed transfer within thirty (30) days following receipt of such notice required herein. Notwithstanding any assignment or transfer (whether with or without Landlord's consent), Tenant shall remain fully liable for its obligations under this Lease including the payment of rent.

**36. Waste or Nuisance:** Tenant shall not commit or suffer to be committed any waste upon the Leased Premises or any nuisance or other act or thing which may disturb the quiet enjoyment of any other tenant in the building in which the Leased Premises may be located, or in the Shopping Center, or which may disturb the quiet enjoyment of any person within or without the boundaries of the Shopping Center.

**37. Governmental And Other Regulations:** Tenant shall, at Tenant's sole cost and expense, comply with all of the requirements of governmental authorities and utilities pertaining to said Premises, and with all rules, regulations and recommendations of Landlord's and Tenant's insurers with respect to fire prevention and liability risks ("Insurance Matters").

**38. Destruction of Premises or Shopping Center:**

(a) If the Leased Premises shall be damaged by fire, the elements, unavoidable accident or other casualty, but are not thereby rendered untenable in whole or in part, Landlord shall, at its own expense, cause such damage to be repaired and the rent shall not be abated. If the Premises shall be rendered untenable only in part, Landlord shall at its own expense cause the damage to be repaired, and the Fixed Minimum Rent meanwhile shall be abated proportionately as to the portion of the Premises rendered untenable. If the Premises shall be rendered wholly untenable the Landlord shall at its own expense cause such damage to be repaired, and the Fixed Minimum Rent meanwhile shall abate until the Leased Premises have been restored and rendered tenantable, or Landlord may at its election, terminate this Lease and the tenancy hereby created by giving to Tenant within the sixty (60) days following the date of said occurrence, written notice of Landlord's election to do so and in event of such termination, rent shall be adjusted as of such date. Notwithstanding anything to the contrary contained in this Section, Landlord's obligation to repair and restore shall be expressly contingent upon and subject to being able to obtain all necessary permits and approvals therefor.

(b) In the event that fifty percent (50%) or more of the rentable area of the Shopping Center shall be damaged or destroyed by fire or other cause, notwithstanding that the Leased Premises may be unaffected by such fire or other cause, Landlord may terminate this Lease and the tenancy hereby created by giving to Tenant five (5) days prior written notice of Landlord's election so to do which notice shall be given, if at all, within the sixty (60) days following the date of said occurrence. Rent shall be adjusted as of the date of such termination.

(c) Anything in this Section to the contrary notwithstanding, if, within three (3) years prior to the expiration of the then current term of this Lease the Premises shall be damaged or destroyed by fire or otherwise and the estimated cost of restoration exceeds twenty-five thousand dollars (\$25,000.00), Landlord shall be under no obligation to repair and restore the Premises, and at the election of Landlord by notice to Tenant the Lease shall terminate.

(d) In the event of damage or destruction to the Premises and unless this Lease is terminated by Landlord as provided in this Section, Tenant shall, as soon as possible, repair, redecorate and refixture the Premises and restock the contents thereof in a manner and to at least a condition equal to that existing prior to its destruction or casualty, and reopen the entire Premises for business. All proceeds of insurance carried by Tenant on Tenant's personal property shall be held in trust for such purposes.

**39. Condemnation:**

(a) If the whole of the Leased Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid upon to that date and Tenant shall have no claim against Landlord nor the condemning authority for the value of any unexpired term of this Lease.

(b) If any part of the Leased Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Leased Premises unsuitable for the business of the Tenant, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding. Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of the Tenant, then Landlord shall, subject to the right of Landlord's mortgagee to retain all or part of the condemnation award, promptly expend so much as may be necessary of the net amount which may be awarded to and received by Landlord in such proceeding in restoring the Leased Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent. Should the net amount so awarded to and received by Landlord be insufficient to cover the cost of restoring the Premises as estimated by Landlord's architect, Landlord may, at Landlord's election terminate this Lease upon five (5) days written notice to Tenant.

(c) If the whole of the common parking areas in the Shopping Center shall be acquired or condemned as aforesaid, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding unless Landlord shall take immediate steps to provide other parking facilities substantially equal to the previously existing ratio between the common parking areas and the Leased Premises, and such substantially equal parking facilities shall be provided by Landlord at its own expense within ninety (90) days from the date of acquisition. In the event that Landlord shall provide such other substantially equal parking facilities, then this Lease shall continue in full force and effect without any reduction or abatement of rent.

(d) If any part of the common parking areas in the Shopping Center shall be acquired or condemned as aforesaid, and if, as the result thereof the ratio of square feet of parking field to square feet of sales area of the entire Shopping Center buildings is reduced to a ratio below that required by law, then at Landlord's option, upon five (5) days written notice to Tenant, the term of this Lease shall cease and terminate, otherwise the Landlord shall take immediate steps toward increasing the parking ratio to that required by law in which event this Lease shall be unaffected and remain in full force and effect without any reduction or abatement of rent. In the event of termination of this Lease as aforesaid, Tenant shall have no claim against Landlord or the condemning authority for the value of any unexpired term of this Lease and rent shall be adjusted to the date of said termination.

(e) In the event of any condemnation or taking as aforesaid, whether whole or partial, the Tenant shall not be entitled to any part of the award paid for such condemnation and Landlord is to receive the full amount of such award, the Tenant hereby expressly waiving any right or claim to any part thereof.

(f) Although all damages in the event of any condemnation are to belong to the Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Leased Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

#### **40. Default:**

(a) If at any time prior to or during the term of this Lease any one or more of the following events shall occur each such event shall constitute an event of default: (i) any failure of Tenant to pay any rental, additional rental, or other charges due at the time due where such failure continues for more than ten (10) days following Landlord's written notice, provided that no more than three (3) such notices shall be required by Landlord in any calendar year; (ii) any failure to perform any other of the terms, conditions, or covenants of this Lease to be observed or performed by Tenant for more than thirty (30) days after written notice of such default shall have been given to Tenant, provided that if such default cannot reasonably be cured within the thirty (30) day period, Tenant shall not be deemed in default if Tenant has commenced to cure such default within the thirty (30) day period and thereafter diligently prosecutes same to completion; (iii) if Tenant or an agent of Tenant shall falsify any report required to be furnished to Landlord pursuant to the terms of this Lease; (iv) if Tenant or any guarantor of this Lease shall become bankrupt or insolvent, or file any debtor proceedings or take or have taken against Tenant or any guarantor of this Lease in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's or any such guarantor's property; (v) if Tenant or any such guarantor makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, (vi) if Tenant shall cease operation of business in, vacate or abandon said Premises, (vii) if Tenant suffer this Lease to be taken under any writ of execution; or (viii) if Tenant transfers or attempts to transfer this Lease or Tenant's

interest herein in violation of this Lease. Upon the happening of any of the foregoing events of default, Landlord, besides the other rights or remedies it may have, shall have the immediate right for re-entry and may remove all persons and property from the Leased Premises and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss damages which may be occasioned thereby.

(b) This Lease and the term are expressly subject to the conditional limitation that upon the happening of any one or more of the aforementioned events of default, Landlord, in addition to the other rights and remedies it may have, shall have the right to immediately declare this Lease terminated and the term ended, in which event all of the right, title and interest of Tenant hereunder shall wholly cease and expire upon receipt by Tenant of a Notice of Termination. Tenant shall then quit and surrender the Premises to Landlord in the manner and under the conditions as provided for under this Lease, but Tenant shall remain liable as hereinafter provided. Any right on the part of Landlord to terminate this Lease shall, when exercised, require no further act to the end that at the expiration of the applicable time period, if any, contained in the particular termination provision, this Lease and the term hereunder shall end and expire as fully and completely as if the termination date was the date herein definitely fixed for the end and expiration of this Lease and the term hereof, and upon such date Tenant shall quit and surrender the Premises to Landlord.

(c) If this Lease be terminated in accordance with this Section 40, Tenant nevertheless covenants and agrees notwithstanding any entry or re-entry by Landlord whether by summary proceedings, termination or otherwise, to pay and be liable for on the days originally fixed herein for the payment thereof, amounts equal to the several installments of Fixed Minimum Rent and additional rent reserved as they would, under the terms of this Lease, become due if this Lease had not been terminated or if Landlord had not entered or re-entered as aforesaid, and whether the Premises be relet or remain vacant in whole or in part or for a period less than the remainder of the term, and for the whole thereof. In the event the Premises be relet by Landlord, Tenant shall be entitled to a credit (but not in excess of the rent reserved under the terms of this Lease) in the net amount of rent received by Landlord in reletting the Premises after deduction of all expenses and costs incurred or paid as aforesaid in reletting the Premises and in collecting the rent in connection therewith. At any time after the termination of the Lease, in lieu of collecting any monthly deficiencies, or any further monthly deficiencies, as aforesaid, Landlord shall, at Landlord's option, be entitled to recover from Tenant, in addition to any other relief, such a sum as at the time of such termination represents the amount of the then present value of the total Fixed Minimum Rent, additional rent and other benefits which would have accrued to Landlord under this Lease for the remainder of the Lease term, as if the Lease had been fully complied with by Tenant, less any monthly deficiencies for such period previously paid to Landlord by Tenant. Suit or suits for the recovery of the deficiency or damages referred to in this subsection or for any installment or installments of Fixed Minimum Rent or additional rent hereunder, or for a sum equal to any such installment or installments, may be brought by Landlord at once or from time to time at Landlord's election, and nothing in this Lease shall be deemed to require Landlord to await the date whereon this Lease or the term hereof would have naturally expired had there been no such default by Tenant or no such termination.

(d) Landlord shall be deemed in default of this Lease if Landlord fails to comply with any term, provision or covenant of this Lease within thirty (30) days after written notice thereof, provided that if such default cannot reasonably be cured within the thirty (30) day period, Landlord shall not be deemed in default if Landlord has commenced to cure such default within the thirty (30) day period and thereafter diligently prosecutes same to completion.

**41. Legal Expenses:** In case suit shall be brought by either party for breach of any covenant contained herein, and a breach shall be established in a court of competent jurisdiction, the prevailing party shall be entitled to all expenses incurred therefor, including a reasonable attorney's fee.

**42. Access by Landlord:** Landlord or Landlord's agents shall have the right to enter the Leased Premises for emergencies at all reasonable times to examine the same, to do any work needed in connection with the maintenance, repair or construction of the Shopping Center, respond to emergencies, show the Premises to prospective purchasers or lessees of the building and to make such repairs as Landlord's deems necessary. During the twelve (12) months prior to the expiration of the then current term of this Lease, Landlord may exhibit the Premises to prospective tenants or purchasers, and place upon the Premises the usual notices "TO LET" or "FOR SALE" which notices Tenant shall permit to remain thereon without molestation. If Tenant shall not be personally present, when for any reason an entry therein shall be necessary or permissible, Landlord or Landlord's agents may enter the same by a master key, or may forcibly enter the same, without rendering Landlord or such agents liable therefor.

**43. Loss or Damage to Tenant Property:** Unless due to negligence of Landlord, Landlord shall not be liable for any injury to, or loss or damage to property or person of Tenant or of others located on the Leased Premises, however caused. Tenant shall give immediate notice to Landlord in case of fire or accidents in the Leased Premises or in the building of which the Premises are a part, and of defects or damages thereto or to any fixtures or equipment.

**44. Holding Over:** Should Tenant continue to occupy the Premises after the expiration or earlier termination of the term without the written consent of Landlord, such tenancy shall be from month-to-month, and such month-to-month tenancy shall be under the same terms, covenants, and conditions as set forth in this Lease, except that Tenant shall pay Fixed Minimum Rent equal to 150% of the Fixed Minimum Rent for the last year of the term. Tenant shall be responsible for any loss or damage due to any such holding over.

**45. Successors:** All rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of the said parties; and if there shall be more than one tenant, they shall all be bound jointly and severally by the terms, covenants and agreements herein. No rights, however, shall inure to the benefit of any assignee of Tenant unless the assignment to such assignee has been approved by Landlord in writing as provided in Section 35 hereof.

**46. Quiet Enjoyment:** Upon payment by the Tenant of the rents herein provided, and upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Leased Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject nevertheless, to the terms and conditions of this Lease.

**47. INTENTIONALLY OMITTED.**

**48. Relocation of Premises:** Landlord shall have the right to relocate the Premises ("Relocation Premises") upon one hundred twenty (120) days written notice to Tenant provided: (i) the physical cost of relocation is paid by Landlord (i.e., the cost of moving Tenant's fixtures, inventory, supplies and equipment to the new location) and Landlord shall reimburse Tenant for additional and actual "out-of-pocket" type expenses incurred in connection with Tenant's relocation to the Relocation Premises (e.g. letterhead, business cards and relocation of existing exterior signage), provided that in no event shall such reimbursement of additional "out-of-pocket" type expenses exceed \$5,000.00; (ii) The Relocation Premises shall contain leasehold improvements that are reasonably equivalent to the leasehold improvements in the Premises and any such leasehold improvements in the Relocation Premises shall be installed or provided by Landlord at its sole cost and expense; (iii) the Relocation Premises is located within an existing or future building in the Shopping Center (exact location to be determined by Landlord in its sole discretion, provided that the store frontage and visibility of the Relocation Premises shall be reasonably equivalent to the existing Premises); (iv) the size and configuration of the Relocation Premises shall be determined by Landlord in its sole discretion, provided that the Relocation Premises shall not vary from the Premises in rentable area by more than  $\pm 200$  square feet; (v) the fixed minimum rent, additional rent, or other charges that are based on the rentable area of the Premises shall be adjusted to reflect the actual rentable area of the Relocation Premises and (vi) in no event shall Tenant be required to surrender the existing Premises until Landlord has delivered the Relocation Premises with all leasehold improvements substantially completed. Tenant shall execute a lease modification to reflect such increase or decrease and such other changes required to effect the relocation as Landlord deems appropriate. Tenant's failure to surrender possession of the Premises and relocate to the Relocation Premises in accordance with this Section 48 herein (time being of the essence) shall constitute an immediate and material default under this Lease entitling Landlord, in addition to any and all remedies available under this Lease or at law or in equity, to reenter the Premises and remove all persons and property therefrom.

**49. Miscellaneous:**

(a) **Waiver:** The waiver by Landlord of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of rent hereunder by Landlord shall not be deemed to be a waiver of any preceding breach by Tenant. The waiver by Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition of any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent payment of rent hereunder by Tenant shall not be deemed to be a waiver of any preceding breach by Landlord.

(b) **No Accord and Satisfaction:** No payment by Tenant or receipt by Landlord of a lesser amount than the rent, additional rent and other charges due as herein stipulated shall be deemed to be other than on account of the earliest stipulated rent or charges, nor shall any endorsement or statement on any check or any letter accompanying any check or payment or charges be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

(c) **Entire Agreement:** This Lease and the Exhibits, and Rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Leased Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them. This Lease shall be governed by the laws of the State of Georgia.

(d) **Force Majeure:** Anything in this agreement to the contrary notwithstanding, the Landlord shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Lease if same shall be due to any strike, lockout, civil commotion, war-like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, Act of God or other cause beyond the control of the Landlord.

(e) **Notices:** Any notice, demand, request or other instrument which may be or are required to be given under this Lease shall be delivered in person or sent by United States certified mail postage prepaid and shall be addressed (a) if to Landlord at the address first hereinabove given or at such other address as Landlord may designate by written notice and (b) if to Tenant at the Leased Premises or at such other address as Tenant shall designate by written notice.

(f) **Broker's Commission:** Each of the parties represents and warrants that neither has dealt with any real estate broker and that no real estate broker was instrumental in bringing about this transaction.

(g) **Partial Invalidity:** If any term, covenant or condition of this Lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(h) **Recording:** Except as otherwise provided herein, Tenant shall not record this Lease without the prior written consent of Landlord, however, upon the request of either party hereto the other party shall join in the execution of a memorandum or so-called short form of this Lease for the purposes of recordation. Said memorandum or short form of this Lease shall describe the parties, the Leased Premises and the term of this Lease and shall incorporate this Lease by reference.

(i) INTENTIONALLY OMITTED.

(j) INTENTIONALLY OMITTED.

(k) **Effective Date:** Submission of this Lease for examination or signature by Tenant does not constitute a reservation or option for Lease, and this instrument shall not become effective as a Lease or in any other capacity until execution and delivery by both Landlord and Tenant. It is the express intent of the parties that a landlord/tenant relationship is established by this Lease, that Tenant has a usufruct pursuant to this Lease and that no estate for years or other estate shall pass out of Landlord as a result of this Lease. All terms and conditions of this Lease shall become fully enforceable on the Effective Date except for such provisions which by their terms expressly provide to the contrary.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

## EXHIBIT A

### Tract One

ALL THAT LAND in Land Lots 111 and 114 of the 12<sup>th</sup> District, Clayton County, Georgia, described as follows:

TO FIND THE POINT OF BEGINNING; commence at an iron pin set at the intersection of the north right-of-way line of Mt. Zion Road (right-of-way varies) (paved) and the northwest right-of-way line of Meadowbrook Lane (80 foot right-of-way) (paved); thence run North 37 degrees 55 minutes 19 seconds East 42.92 feet along the northwest right-of-way line of Meadowbrook Lane to a point; thence run along the arc of a curve to the left (having a chord bearing of North 37 degrees 56 minutes 51 seconds East 71.51 feet and a radius of 56,395.30 feet) 71.51 feet along the northwest right-of-way line of Meadowbrook Lane to a point and the POINT OF BEGINNING; from said point of beginning as thus established, run along the arc of a curve to the left (having a chord bearing of North 37 degrees 56 minutes 51 seconds East 517.69 feet and a radius of 56,395.30 feet) 517.69 feet along the northwest right-of-way line of Meadowbrook Lane to an iron pin set; thence along the arc of a curve to the left (having a chord bearing of North 37 degrees 18 minutes 23 seconds East 305.40 feet and a radius of 8,743.60 feet) 305.41 feet along the northwest right-of-way line of Meadowbrook Lane to a point; thence North 15 degrees 59 minutes 05 seconds West 80.03 feet to an iron pin set on the southwest right-of-way line of Interstate Highway 75 (right-of-way varies); thence the following five (5) courses and distances along the southwest right-of-way line of Interstate Highway 75, (1) along the arc of a curve to the left (having a chord bearing of North 58 degrees 58 minutes 22 seconds West 778.58 feet and a radius of 5,729.58 feet) 779.18 feet to an iron pin set; (2) North 71 degrees 51 minutes 56 seconds West 97.93 feet to an iron pin set; (3) North 64 degrees 12 minutes 21 seconds West 98.04 feet to an iron pin set; (4) North 61 degrees 54 minutes 22 seconds West 206.40 feet to a point; (5) along the arc of a curve to the left (having a chord bearing of North 70 degrees 05 minutes 57 seconds West 596.69 feet and a radius of 5,729.58 feet) 596.96 feet to a point; thence leaving said southwest right-of-way line of Interstate Highway 75 South 19 degrees 18 minutes 25 seconds West 40.52 feet to a point; thence South 72 degrees 18 minutes 37 seconds East 286.59 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 90.00 feet to a point; thence North 72 degrees 18 minutes 38 seconds West 84.01 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 91.00 feet to a point; thence North 72 degrees 18 minutes 38 seconds West 6.00 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 371.33 feet to a point; thence North 76 degrees 57 minutes 14 seconds West 340.50 feet to a point; thence South 02 degrees 50 minutes 45 seconds West 37.37 feet to a point; thence along the arc of a curve to the right (having a chord bearing of North 52 degrees 56 minutes 53 seconds East 15.34 and a radius of 10.00 feet) 17.48 feet to a point; thence South 76 degrees 57 minutes 14 seconds East 387.62 feet to a point; thence along the arc of a curve to the right (having a chord bearing of South 37 degrees 26 minutes 26 seconds East 12.73 feet and a radius of 10.00 feet) 13.80 feet to a point; thence South 02 degrees 04 minutes 16 seconds West 147.26 feet to a point; thence along the arc of a curve to the right (having a chord bearing of South 46 degrees 15 minutes 01 seconds West 41.81 feet and a radius of 30.00 feet) 46.26 feet to a point on the North right-of-way line of Southlake Parkway (100 foot right-of-way); thence South 89 degrees 34 minutes 13 seconds East 72.76 feet along the north right-of-way line of Southlake Parkway to a



point; thence along the arc of a curve to the right (having a chord bearing of South 77 degrees 36 minutes 19 seconds East 186.58 feet and a radius of 450.00 feet) 187.94 feet along the north right-of-way line of Southlake Parkway to a point; leaving said north right-of-way line of Southlake Parkway, thence North 25 degrees 05 minutes 23 seconds east 175.11 feet to a point; thence North 17 degrees 41 minutes 23 seconds East 347.35 feet to a point; thence South 72 degrees 18 minutes 37 seconds East 44.14 feet to a point; thence South 27 degrees 26 minutes 27 seconds East 160.22 feet to a point; thence South 72 degrees 18 minutes 37 seconds East 25.73 feet to a point; thence North 17 degrees 41 minutes 24 seconds East 276.58 feet to a point; thence South 61 degrees 54 minutes 28 seconds East 48.89 feet to a point; thence North 28 degrees 19 minutes 47 seconds East 19.39 feet to a point; thence South 64 degrees 12 minutes 21 seconds East 88.26 feet to a point; thence South 71 degrees 51 minutes 27 seconds East 93.93 feet to a point; thence South 59 degrees 29 minutes 37 seconds East 152.98 feet to a point; thence South 17 degrees 41 minutes 28 seconds West 104.85 feet to a point; thence North 72 degrees 18 minutes 37 seconds West 122.14 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 258.47 feet to a point; thence South 37 degrees 31 minutes 25 seconds East 16.69 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 101.16 feet to point; thence South 17 degrees 41 minutes 23 seconds West 101.16 feet to point; thence North 72 degrees 18 minutes 37 seconds West 382.87 feet to a point; thence North 72 degrees 18 minutes 50 seconds West 59.13 feet to a point; thence South 25 degrees 05 minutes 23 seconds West 177.11 feet to a point on the northeast right-of-way line of Southlake Parkway; thence along the arc of a curve to the right (having a chord bearing of South 62 degrees 46 minutes 52 seconds East 14.90 feet and a radius of 450.00 feet) 14.90 feet along the northeast right-of-way line of Southlake Parkway to a point; leaving said northeast right-of-way line of Southlake Parkway to a point; leaving said northeast right-of-way line of Southlake Parkway, thence North 25 degrees 01 minute 28 seconds East 164.47 feet to a point; thence South 72 degrees 18 minutes 35 seconds East 44.17 feet to a point; thence South 25 degrees 05 minutes 23 seconds West 92.77 feet to a point; thence South 72 degrees 18 minutes 34 seconds East 448.92 feet to a point; thence North 17 degrees 41 minutes 23 seconds East 107.01 feet to a point; thence South 72 degrees 18 minutes 38 seconds East 78.48 feet to a point; thence North 62 degrees 52 minutes 58 seconds East 219.42 feet to a point; thence South 27 degrees 18 minutes 37 seconds East 233.13 feet to a point; thence South 17 degrees 41 minutes 25 seconds West 498.28 feet to point; thence South 72 degrees 18 minutes 54 seconds East 37.57 feet to the POINT OF BEGINNING; said tract containing 16.470 acres as shown on that certain plat of survey entitled "Survey for Glenwood Morrow Company, L.L.C., Chicago Title Insurance Company, Ramsay Title Group, LLC", prepared by J.A. Evans & Associates, bearing the seal and certification of James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, dated November 29, 1999, last revised December 23, 1999, bearing Job No. 307399.



Tract Two

ALL THAT LAND in Land Lots 111 and 114 of the 12<sup>th</sup> District, Clayton County, Georgia, described as follows:

BEGINNING at the intersection of the southeast right-of-way of Barton Road (right-of-way varies) (paved) and the southwest right-of-way of Interstate Highway 75 (right-of-way varies) thence run South 75 degrees 26 minutes 53 seconds East 167.06 feet along the southwest right-of-way line of Interstate Highway 75 to an iron pin set; thence along the arc of a curve to the right 9 having a chord bearing of South 74 degrees 57 minutes 21 seconds East 83.12 feet and a radius of 5729.58 feet) 83.12 feet along the southwest right-of-way line of Interstate Highway 75 to a point; leaving said southwest right-of-way line of Interstate Highway 75 thence South 17 degrees 41 minutes 23 seconds West 169.08 feet to a point; thence South 62 degrees 39 minutes 35 seconds West 38.86 feet to a point; thence North 72 degrees 18 minutes 37 seconds West 115.64 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 263.54 feet to a point; thence South 77 degrees 41 minutes 21 seconds West 66.97 feet to a point; thence South 17 degrees 41 minutes 23 seconds West 65.87 feet to a point on the southeast right-of-way line of Barton Road; thence North 12 degrees 35 minutes 38 seconds East 548.66 feet along the southeast right-of-way line of Barton Road to the POINT OF BEGINNING; said tract containing 1.557 acres as shown on that certain plat of survey entitled "Survey for Glenwood Morrow Company, L.L.C., Chicago Title Insurance Company, Ramsay Title Group, LLC", prepared by J.A. Evans & Associates, being the seal and certification of James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, dated November 29, 1999, last revised December 23, 1999, being Job No. 307399.

Tract Three

ALL THAT LAND in Land Lots 111 and 112 of the 12<sup>th</sup> District, Clayton County, Georgia, described as follows:

BEGINNING at the intersection of the southeast right-of-way line of Barton Road (right-of way varies) and the north right-of-way line of Southlake Parkway (100 foot right-of-way), thence run South 80 degrees 37 minutes 45 seconds East 46.55 feet along the north right-of-way line of Southlake Parkway; leaving said north right-of-way line of Southlake Parkway, thence run along the arc of a curve to the right (having a chord bearing of North 34 degrees 57 minutes 58 seconds West 55.64 feet and a radius of 37.07 feet) 62.93 feet to a point; run thence North 12 degrees 45 minutes 31 seconds East 244.61 feet to a point; run thence along the arc of a curve to the right (having a chord bearing of North 57 degrees 54 minutes 08 seconds East 42.53 feet and a radius of 30.00 feet) 47.27 feet to a point; run thence South 76 degrees 57 minutes 14 seconds East 105.63 feet to a point; run thence along the arc of a curve to the right (having a chord bearing of South 37 degrees 03 minutes 05 seconds East 12.83 feet and a radius of 10.00 feet) 13.93 feet to a point; run thence South 02 degrees 51 minutes 03 seconds West 247.89 feet to a point; run thence along the arc of a curve to the right (having a chord bearing of South 46 degrees 38 minutes 22 seconds West 41.52 feet and a radius of 30.00 feet) 45.85 feet to a point on the north right-of-way line of Southlake Parkway; run thence South 89 degrees 34 minutes 13 seconds East 53.78 feet along said north right-of-way line of Southlake Parkway to a point; thence leaving said north right-of-way line of Southlake Parkway run North 02 degrees 51 minutes 03 seconds East a distance of 304.86 feet to a point; run thence North 76 degrees 57 minutes 14 seconds West 171.45 feet to a point on the southeast right-of-way line of Barton Road; run thence South 12 degrees 35 minutes 38 seconds West 338.60 feet along the southeast right-of-way line of Barton Road to a point and the POINT OF BEGINNING; said tract containing 0.320 acres as shown on that certain plat of survey entitled "Survey for Glenwood Morrow Company, L.L.C., Chicago Title Insurance Company, Ramsay Title Group, LLC", prepared by J.A. Evans & Associates, bearing the seal and certification of James A. Evans, Jr., Georgia Registered Land Surveyor No. 2167, dated November 29, 1999, last revised December 23, 1999, bearing Job No. 307399.

TOGETHER WITH all easements and other matters of record.

THIS MAP IS NOT A CERTIFIED SURVEY. NO RELIANCE MAY BE PLACED IN ITS ACCURACY. TENANT ACKNOWLEDGES THAT THE SHOPPING CENTER DEPICTED HEREIN IS A PROPOSED SITE PLAN AND SUBJECT TO CHANGES AT LANDLORDS SOLE DISCRETION AND DOES NOT CONSTITUTE A REPRESENTATION, COVENANT OR WARRANTY OF ANY KIND BY LANDLORD.

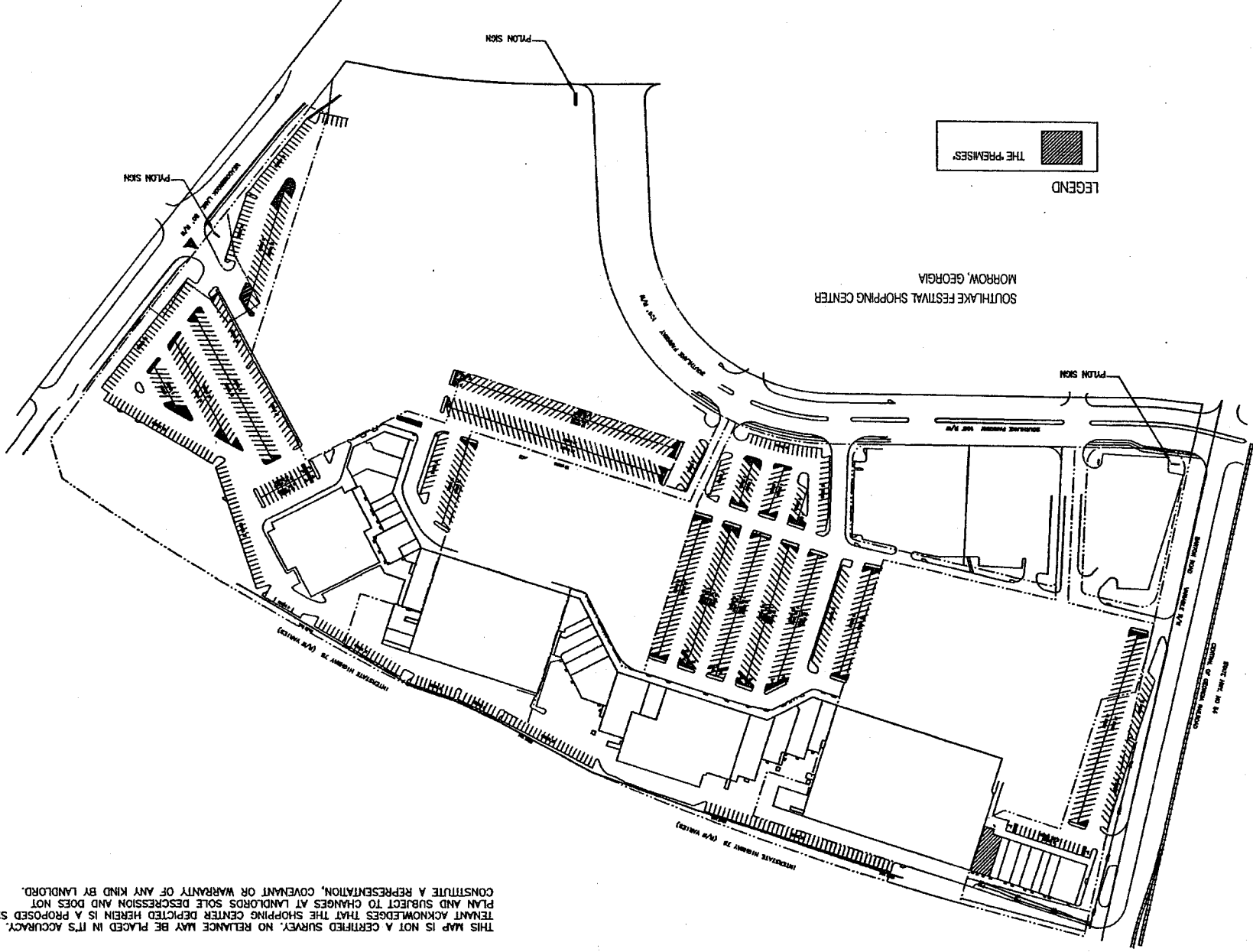


EXHIBIT "B"

## RULES AND REGULATIONS

(1) All loading and unloading of goods shall be done only at such times, in the areas and through the entrances designated for such purposes by Landlord.

(2) The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the judgment of the Landlord are necessary for the proper operation of the building or Shopping Center.

(3) All garbage and refuse shall be kept in the kind of container specified by Landlord and shall be placed outside of the Premises prepared for collection in the manner and at the times and places specified by Landlord. If Landlord shall provide or designate a service for picking up refuse and garbage, Tenant shall use same at Tenant's cost; Tenant shall pay the cost of removal of any of Tenant's refuse or rubbish.

(4) No loud speakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of the Landlord.

(5) Tenant shall keep the Premises at a temperature sufficiently high to prevent freezing of water in pipes and fixtures.

(6) The outside areas immediately adjoining the Premises shall be kept clean and free from snow, ice, dirt and rubbish by the Tenant to the satisfaction of the Landlord, and Tenant shall not place or permit any obstructions or merchandise in such areas.

(7) The plumbing facilities shall not be used for any other purpose than that for which they are constructed, and no foreign substance of any kind shall be thrown therein, and the expense of any breakage, stoppage or damage resulting from a violation of this provision shall be borne by Tenant, who shall, or whose employees, agents or invitees shall have caused it.

(8) Tenant shall not burn any trash or garbage of any kind in or about the Premises.

(9) Tenant shall use at Tenant's cost such pest extermination contractor as Landlord may direct and at such intervals as Landlord may reasonably require.

(10) Tenant and Tenant's employees shall park their vehicles only in those portions of the parking area designated for that purpose by Landlord.

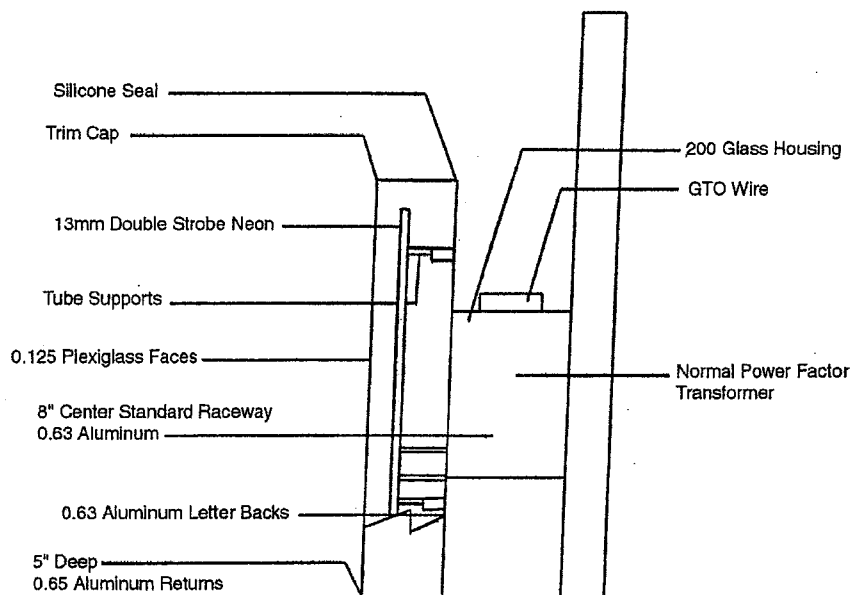
(11) The sidewalks, entrances, passages, vestibules, stairways, corridors or halls shall not be obstructed or encumbered by Tenant or used for any purpose.

INTENTIONALLY OMITTED

EXHIBIT "D"

## SIGN SPECIFICATIONS

1. Subject to Landlord's reasonable written approval, all specifications set out must be adhered to, no exceptions.
2. Maximum 24" high Helvetica Medium channel letters, all upper case (capitals), illuminated.
3. Letters mounted on .063 aluminum "raceway." Raceway to be painted to match the color of the signage band fascia to which the raceway attaches. Raceway must be centered vertically behind letters.
4. Aluminum .063 returns 5" deep, painted Dark Bronze (Duranodic 20-313).
5. 0.125 plastic faces (color to be approved by Landlord) manufactured by Plexiglas only (no substitutes will be accepted).
6. 8300 Light Source white 13 mm double stroke neon. No exposed neon.
7. UL approved and listed transformers bearing UL stickers.
8. Bronze trim cap.
9. Tenant to hire Landlord-approved sign company to manufacture, assemble, paint, install (including electrical connection to Landlord provided junction box), and service sign. **All signage shall be tested by Tenant's sign company immediately following installation to confirm that it functions properly.**
10. Refer to sign drawing below for example.
11. Signage length limited to minimum 24" less than the tenant storefront width, centered within the storefront, subject to available signage area and Landlord approval.
12. Signage to comply with all applicable codes, including local zoning ordinances. Town permits must be obtained prior to installation.
13. Landlord Field Representative must approve sign in writing with the "Pre-Installation Approval" form prior to installation on building. Landlord reserves the right to require Tenant to remove and revise its signage to comply with Landlord's specifications at Tenant's sole cost and expense if Tenant fails to obtain Landlord's approval in accordance with this paragraph 13 herein. Failure to comply with this procedure by Tenant shall be an event of default.



**CHANNEL LETTER and RACEWAY DETAIL**

EXHIBIT "E"